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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

MMC

Case No. **C 06 0258**
COMPLAINT

11 CHRISTINE ONDERSMA,
12 Plaintiff,

13 v.

14 METROPOLITAN LIFE INSURANCE
15 COMPANY, WELLS FARGO &
16 COMPANY SHORT TERM DISABILITY
17 PLAN, WELLS FARGO & COMPANY
18 LONG TERM DISABILITY PLAN

19 Defendants.

20 **JURISDICTION**

21 1. This action for declaratory, injunctive, and monetary relief is brought
22 pursuant to § 502 of ERISA, 29 U.S.C. § 1132, and the Declaratory Judgement Act, 28
23 U.S.C. § 2201. This Court has subject matter jurisdiction over plaintiff's claims :
24 pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United
25 States.

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28 COMPLAINT

VENUE

2. Venue lies in the Northern District of California pursuant to 28 U.S.C. § 1391 (b) because one of the defendants does business in this district.

PARTIES

3. At all relevant times, plaintiff CHRISTINE ONDERSMA ("plaintiff") was a participant, as defined in ERISA § 3(7), 29 U.S.C. § 1002 (7), in defendants WELLS FARGO & COMPANY SHORT TERM DISABILITY PLAN and WELLS FARGO & COMPANY LONG TERM DISABILITY PLAN (collectively the "plans"). Plaintiff resides in Clayton, California.

4. At all relevant times, the plans were employee welfare benefit plans within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1). At all relevant times, the plans offered short-term and long-term disability benefits to the employees of Wells Fargo, including plaintiff, through an insurance policy issued by defendant METROPOLITAN LIFE INSURANCE COMPANY ("MetLife") or its predecessors. The plans are named herein as necessary parties for the relief requested.

5. At all relevant times, MetLife was a fiduciary of the plans within the meaning of ERISA § 3(21) , 29 U.S.C. § 1002(21). At all relevant times, MetLife acted as the claims fiduciary for the plans, and exercised authority and control over the payment of short-term and long-term disability benefits that are plan assets.

FACTS

6. Prior to her disability, plaintiff worked as Project Manager for Wells Fargo.

7. Plaintiff suffers from severe and disabling fibromyalgia.

8. At all relevant times, plaintiff has been unable to work in any occupation because of her disability.

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9. In August 2001, plaintiff submitted a claim for short-term disability benefits to MetLife. MetLife approved plaintiff's claim and she began receiving short-term disability benefits in August 2001.

10. MetLife required plaintiff to submit attending physician reports. Plaintiff's attending physicians and MetLife deemed her to be disabled based upon the condition described in paragraph 7 of this Complaint.

11. In November 2001, MetLife informed plaintiff that based on a lack of medical information to support continuous disability, it was terminating her short-term disability benefits.

12. Plaintiff appealed the termination of her short-term disability benefits by submitting written requests for review.

13. MetLife did not review plaintiff's requests as required by Department of Labor regulations. Instead, on December 11, 2002, MetLife wrote to plaintiff reiterating its denial of short-term disability benefits.

14. In March 2003, plaintiff requested MetLife to reconsider its decision to terminate short-term disability benefits.

15. In August 2003, MetLife responded to plaintiff's request and refused to reconsider its decision to terminate plaintiff's short-term disability benefits.

16. In July 2004, plaintiff once again requested MetLife to reconsider its decision to terminate short-term disability benefits.

17. In September 2004, MetLife once again refused to reconsider its decision to terminate plaintiff's short-term disability benefits.

18. In October 2004, plaintiff submitted a claim for long-term disability benefits to MetLife.

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1 19. In March 2005, MetLife denied plaintiff's request for long-term disability
2 benefits.

3 20. In April 2005, plaintiff appealed MetLife's decision to deny long-term
4 disability benefits.

5 21. On September 15, 2005, MetLife denied plaintiff's appeal.

6 22. On September 27, 2005, plaintiff requested MetLife to reconsider its
7 denial of long-term disability benefits.

8 23. In November 2005, MetLife refused to reconsider its decision denying
9 plaintiff's request for long-term disability benefits.

10 24. Plaintiff has exhausted her administrative remedies.

11 25. Under the long-term disability plan, plaintiff is required to apply for Social
12 Security disability benefits if she becomes disabled as defined by the plan.

13 26. Plaintiff applied for Social Security disability benefits.

14 27. On June 28, 2003, the Social Security Administration granted plaintiff
15 benefits finding that her period of disability began on October 1, 2001.

16 28. Plaintiff remains disabled and is entitled to benefits under the terms of the
17 plans.

18 **FIRST CLAIM FOR RELIEF**
19 **[Claim for Benefits Pursuant to ERISA § 502 (a) (1) (B)**
20 **against Defendants]**

21 29. Plaintiff incorporates Paragraphs 1-28 as though fully set forth herein.

22 30. ERISA § 502 (a) (1) (B), 29 U.S.C. § 1132 (a) (1) (B), permits a participant
23 of a plan to bring a civil action to recover benefits due to her under the terms of the
24 plans, to enforce her rights under the terms of the plans, and /or to clarify her rights to
25 future benefits under the terms of the plans.

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31. By failing to pay plaintiff's short-term and long-term disability benefit payments and by refusing to restore said benefit payments, defendants have violated, and continue to violate, the terms of the plans and plaintiff's rights thereunder.

SECOND CLAIM FOR RELIEF
**[Declaratory Relief Pursuant to 28 U.S.C. § 2201 and ERISA
§ 502 (a) (3) against Defendants]**

32. Plaintiff incorporates Paragraphs 1-28 by reference as though fully set forth herein.

33. An actual controversy exists between the parties, as follows: Plaintiff contends that she is entitled to short-term and long-term disability benefits as a result of being totally disabled. Plaintiff is informed and believes, and based thereon alleges, that defendants contend plaintiff is not totally disabled and on that basis have denied her short-term and long-term disability benefits under the plans.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the court to enter judgment against the defendants as follows:

As to the First Claim for Relief:

A. Declare that defendants, and each of them, violated the terms of the plans and plaintiff's rights thereunder by failing to grant plaintiff's request for a full and fair review and pay plaintiff's short-term and long-term disability benefits;

B. Order defendants, and each of them, to pay plaintiff's disability benefits pursuant to the terms of the plans from November 2001, through the date judgment is entered herein, together with prejudgment interest on each and every such monthly payment through the date judgment is entered herein;

C. Award plaintiff prejudgment interest on all damages requested herein;

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COMPLAINT

1 D. Award plaintiff reasonable attorney's fees and costs of suit incurred herein
2 pursuant to ERISA § 502 (g), 29 U.S.C. § 1132 (g); and

3 E. Provide such other relief as the Court deems equitable and just.

4 **As to Second Claim for Relief:**

5 A. Declare plaintiff's rights regarding the plans as follows:

6 1. Declare that plaintiff is entitled to a full and fair review of her claims
7 for short-term and long-term disability benefits;

8 2. Declare plaintiff's right to receive short-term and long-term disability
9 benefits payments under the terms of the plans from November 2001, through date of
10 judgment;

11 3. Declare plaintiff's right to receive future long-term disability benefit
12 payments under the terms of the plan.


13 B. Award plaintiff reasonable attorney's fees and costs of suit incurred herein
14 pursuant to ERISA § 502 (g), 29 U.S.C. § 1132 (g); and

15 C. Provide such other relief as the Court deems equitable and just.

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17 Dated: January 9, 2006

ROBOOSTOFF & KALKIN

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19 By:


Constantin V. Roboostoff
Attorneys for plaintiff

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COMPLAINT